2. That the lotteries were private lotteries, the issue of tickets, which are not transferable, being confined to the members of the Turf Club.
3. That the accused had in his possession ten tickets in these lotteries.
4. That on the 22nd December 1938 the accused transferred to Mohamed Yacob, witness 4, a one-tenth share in four tickets in these lotteries free. The numbers of these four tickets corresponded to the numbers on four tickets found in the possession of the accused.
5. That Mohamed Yacob, witness 4, is not a member of the Penang Turf Club.

No appeal was brought against the Magistrate's finding in paragraph 4 that the accused transferred the shares free but Mohamed Yacob said in evidence "one tenth share was to cost 40 cents. I have not paid the forty cents yet" while Exhibit C which appellant gave to Yacob has on it besides the dates and numbers of the four tickets the words written by the appellant "each share 40 cents only. 1/10th share". It appears to me that the Magistrate addressed his mind more to the question whether Yacob had actually paid rather than to the question whether Yacob was to pay. This is not unnatural having regard to the way in which the first charge was laid, namely, that the accused "did receive money". It does not follow from the fact that Yacob had not paid that he was getting his share free.

The case was argued on the basis that the share given to Yacob was a gift and that Exhibit C was a lottery ticket. Exhibit C was as follows:

"Penang Turf Club

26.12.38	No. 28305
31.12.38	No. 21292
2.1.39	No. 19823
7.1.39	No. 28955

Each share 40 cents only 1/10 share".

It was argued by Mr. Lim Kheng Kooi for the appellant that as no ticket was sold to Yacob and as the Turf Club tickets referred to in Exhibit C were at all material times in the possession of the appellant no offence had been committed.

That there was a private lottery was not in dispute. In my opinion Exhibit C is a lottery ticket as defined in the Ordinance.

> "Lottery ticket includes any paper or figure or writing or symbol or other article whatsoever which either expressly or tacitly entitles or purports to entitle the holder or any other person to receive any money or money's worth on the happening of any event or contingency connected with any public lottery."

Once any person who is not a member of the Club acquires an interest in a lottery ticket, the lottery so far as that person is concerned becomes a sub-lottery and a public lottery. *Kader Batcha v. Public Prosecutor* 4 M.L.J., 251, 1935 F.M.S.L.R., 18 though *qua* the Penang Turf Club it is not a public lottery since it was done without the knowledge of and against the rules of the club.

Mr. Lim relied on the judgment of Darling J. in *Willis v. Young and Stembridge* (1907) 1 K.B. at p. 455 as shewing that an absolutely free and gratuitous distribution of chances, none of which has been paid for, would not be a lottery. But whatever the English law may be, there is nothing in the Common Gaming Houses Ordinance to indicate that payment for a chance is an essential ingredient of a lottery. There is a clear indication to the contrary in section 4(d) which among other things enacts that any person who sells or offers for sale or gives or delivers any lottery ticket is liable to a penalty. I stress the word "gives" and I draw attention to the words "if any" in section 10.

Qua the lottery organised by the Club Yacob was a member of the public. The appellant gave Yacob a document by which money might be allotted by the appellant to Yacob depending upon chance and this sub-lottery must have begun as soon as a ticket was first given, to adopt the words of Lord Hewart in *Ranson v. Burgess* 137 L.T.R., 530 and this sub-lottery must, in the words of the definition of "public lottery", "until the contrary is proved, be deemed to be a public lottery".

In my opinion even on the basis that the chance was a free gift from the appellant to Yacob the former gave a lottery ticket to Yacob contrary to section 4(d) and under section 310 of the Criminal Procedure Code I would alter the finding to guilty under section 4(d) and confirm the sentence.

The appeal is dismissed.

Gordon Smith, Ag. J.A.—I agree.

Poyser, C.J. (F.M.S.)—I agree.

Finding altered—Sentence Confirmed.

[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J., TERRELL, J.A. AND POYSER, C.J. (F.M.S.)

June 21, 1939.

ANG KHYE PANG v. CHOP BAN AIK.

[SINGAPORE CIVIL APPEAL No. 3 of 1939]

Moneylenders Ordinance, Section 4—Authentication by lender or his agent.

A promissory note was signed by Tan Say Boh as the borrower and immediately below his signature a

rubber stamp or chop was affixed bearing the words "Ban Aik Singapore" and some Chinese characters. The original promissory note had attached to it as part of the same sheet of paper an acknowledgment signed by Tan Say Boh acknowledging that before receiving the money and before giving the note a copy thereof authenticated by the lender had been delivered to and received by him as the borrower. Below the acknowledgment appeared a further memorandum or certificate to the effect that the above document was authenticated by the lender as a copy of the original promissory note but that memorandum or certificate was not signed.

Held, that, the copy of the promissory note was a sufficient and true copy of the memorandum of the contract and that it was not necessary that the copy of the promissory note delivered to the borrower should be signed by him, in view of the fact that the acknowledgment on the copy of the promissory note was signed by the borrower and the copy itself by the lender. However as the memorandum or certificate of authentication had not been signed by the lender the contract was not enforceable under Section 4 Subsection 1 of the Money-lenders Ordinance.

APPEAL.

Thorne for the Appellant.

Johannes for the Respondent.

The facts and arguments sufficiently appear from the judgments.

McElwaine, C.J.—The plaintiff (respondent) who is a moneylender sued the defendant (appellant) on a promissory note and recovered judgment against him.

The defendant appeals against this judgment principally upon the grounds set out in paragraph 3 of the defence which is as follows:—

> "The defendants say that the plaintiff failed to deliver to them a copy of the said promissory note authenticated by the plaintiff before the loan was made".

Section 4 (1) of the Moneylenders Ordinance (Cap. 218) enacts that no contract for the repayment by the borrower of money lent to him by a moneylender and no security given by the borrower in respect of any such contract shall be enforceable unless a note or memorandum in writing of the contract in the English language be signed by the parties and unless a copy thereof authenticated by the lender be delivered to the borrower before the money is lent, and no such contract or security shall be enforceable if the note or memorandum was not signed before the security was given.

By subsection (4) a promissory note in the English language containing all the terms of the contract if countersigned by the lender shall in itself be a sufficient note or memorandum of the contract.

As this appeal turns on the sufficiency or insufficiency of the copy delivered to the borrower, I set out in full the whole of the document delivered to the defendant in purported compliance with section 4 (1):—

"Copy"

Singapore, 12th July, 1938.

$2,000/-.

I/We.....
.....
jointly and severally promise to pay to Ang Khye Pang or Order the sum of Dollars Two thousand only (being as to $1,840/- the principal of a loan borrowed by me/us this day from him and as to $160/- interest thereon) by 5 consecutive monthly instalments of Dollars Four hundred each (to be appropriated as to $368/- to principal and as to $32/- to interest) commencing on the 12th day of August next and to pay simple interest on any instalment unpaid on the due date at the rate of 35 per centum per annum from the due date until payment and in the event of default being made in payment of any instalment for ten days after the due date then on demand the balance of principal then owing shall become due and payable forthwith and such principal sum shall carry interest at the rate aforesaid from the date of demand until payment.

For Value Received.

Ang Khye Pang (Chinese Characters)

Countersignature of the Lender or his Agent."

"I/We the abovenamed.....
.....
hereby acknowledge to have received this 12th day of July, 1938, from the abovenamed lender Ang Khye Pang the abovementioned sum of Dollars One thousand eight hundred and forty only after the above promissory note was signed by me/us and countersigned by him and I/We also acknowledge that before receiving the said sum and before giving this promissory note to the lender Ang Khye Pang a copy thereof (including this acknowledgment except my/our signature thereto) authenticated by the lender Ang Khye Pang was delivered to and received by me/each of us.

Signature of Borrower

Tan Say Boh

(Chinese Characters)

(Stamp)

The above printed and partly written document is hereby authenticated by me as a copy of the original promissory note of which it purports to be a copy of an acknowledgment at the foot of the original document prepared for the signature of the abovenamed Borrower but not yet signed by the Borrower.

Signature of Lender or his Agent."

Tan Say Boh who signed as borrower is the sole proprietor of Chop Ban Aik.

The original promissory note has attached to it as part of the same sheet of paper an acknowledgment identical with that on the copy.

The original promissory note is countersigned by the lender in Chinese and is signed by the borrower in Chinese at the foot of the promissory note at the right hand side. Immediately below the signature of the borrower is the impression of a rubber stamp bearing the words "Ban Aik Singapore" and some Chinese characters.

The copy is countersigned by the lender. In the place where the borrower's signature appears on the original the copy shews some Chinese characters which

are struck out and underneath are some more Chinese characters which are not struck out. Neither the characters which are struck out nor the characters below them represent the borrower's name.

The authentication certificate is not signed. Mr. Thorne's argument before the Court of Appeal was (1) that the copy of the promissory note is insufficient as it does not bear the defendant's name in the place where the defendant signed the original and as it does not bear an impression of the rubber stamp; (2) that the copy of the note is not authenticated by the lender.

It appears to me that both these points are raised by paragraph 3 of the defence.

At the trial the original was marked exhibit B and the "Copy" B1 and I shall so refer to them.

The trial Judge's judgment so far as material to this appeal is as follows:—

> "Defendant alleged (a) that B1, the document handed to defendant at the time of making the loan, was not a copy of the promissory note, B, and (b) that B1 was not authenticated by the lender. There was no dispute that B was a note or memorandum which complied with sections 4 (3) and 4 (4). An examination of B and B1 shows that B1 is headed "Copy" and contains all the printed words on B and in addition an authentication clause at the bottom. Plaintiff signed B1 in the same place as he signed B. Defendant says that he should have signed at the foot of B1 below the authentication clause and having failed to do so, the document was therefore not "authenticated" within the meaning of section 4. As B1 contained an exact copy of the contract and bore the signature of both plaintiff and defendant on its face, I held that it was a substantial and adequate compliance with the requirements of section 4 so far as authentication was concerned, and was a copy, though not a duplicate, of B except for defendant's signature. It gave the defendant all the information which the ordinance contemplated he should get and at the same time bore the plaintiff's signature".

It is not necessary that the copy of the promissory note should be signed by the defendant.

Section 4 (1) requires that there be a note or memorandum in writing and that note or memorandum be signed by the parties. The subsection also requires that a copy thereof authenticated by the lender be delivered to the borrower. "Thereof" refers to the note or memorandum and not necessarily to the note or memorandum after it has been signed. It is the terms of the contract, not the executed document, which must be set out. Here the promissory note is, by virtue of subsection (4) the note or memorandum, and it is also the security. Subsection (1) requires that the note of memorandum, that is, the original promissory note must be signed by both parties before the money is advanced or before the promissory note is given as the case may be. This subsection is in the main based on section 6 (1) of the English Act of 1927 but in England the memorandum and the promissory note are not one and the same document as they generally are in this Colony by virtue of section 4 (4). Under the Ordinance the promissory note must be signed by both parties and a copy handed to the borrower before the money is advanced and before the borrower hands over the promissory note (which is the security) to the money lender.

Mr. Johannes relied on *Sherwood v. Deeley and wife* 47 T.L.R. 419. The "note" which did not purport to be signed in that case was not the promissory note but the copy of the memorandum supplied to the borrower. The case supports Mr. Johannes' contention that the copy supplied to the borrower need not purport to shew his name as having been written on the original memorandum. In *T. W. Bennet & Co., v. Smith* 47 T.L.R. 592 the copy of the memorandum had not on it the name or address of the lenders or of the borrower, but it was another defect in the copy which caused the failure of the plaintiff's case.

Exhibit B1 appears to be very similar to the memorandum in *Reading Trust Ltd. v. Spero* (1930) 1 K.B. 492. There the memorandum setting out the terms of the contract was not signed by the borrower. But attached to the memorandum was an acknowledgment of having received it and this acknowledgment was signed by the borrower. I have already set out Exhibit B1 in full. It says that before giving the promissory note a copy thereof was given to the borrower. The borrower signed the acknowledgment which directly referred to the note, and I think his signature, even if necessary on the copy, covers the whole document, as it apparently did in the *Reading Trust* case, where the original memorandum was signed, not immediately under the terms of the contract but under the acknowledgment. See too the memorandum in *Dunn Trust Ltd. vs. Feetham* (1936) 1 KB. 22.

In my opinion a true copy of the memorandum of the contract was supplied to the borrower.

The second point taken was that the copy of the memorandum was not authenticated by the lender.

The copy of the promissory note in Exhibit B1 is actually countersigned by the lender and it is argued that this fact does not authenticate the promissory note (or memorandum). The fact that the lender's signature on the copy is a genuine signature is not apparent on the face of the document which is headed "Copy". The signature itself might be taken to be like the rest

of the document, a copy of the signature on the original. A person looking at the certificate of authentication at the foot of the document and noticing that it is unsigned would not think that the lender's signature at the foot of the copy of the note was intended to be an authentication. I think "authentication" implies some sort of certificate signed by the lender and this must have been the view of the plaintiff who has had his forms printed with a proper form of certificate attached. The acknowledgment is a printed form and it recites that the copy of the promissory note was authenticated by the lender. The form undoubtedly contemplated the certificate at the foot of Exhibit B1 being signed by the lender before the acknowledgment on the original was signed.

Even accepting, as the learned trial Judge appears to have done, that the plaintiff's name on Exhibit B1 was actually written by himself and not by his son and attorney as sworn by the defendant, I cannot regard this signature as an authentication of the document and on this most immeritorious ground the appeal succeeds.

Two other grounds of appeal were raised. The first that the note did not truly represent the contract was not seriously pressed and in view of the Judge's finding of fact this ground fails. The second ground was that the trial Judge refused to receive evidence that the copy of the memorandum was not given before the money was lent. In his judgment the trial Judge refers to the plaintiff's evidence on the point and finally concluded that the whole transaction took place at one and the same time. As the defendant was not allowed to give evidence on that point this finding is unsatisfactory. Evidence on the point was just as admissible as evidence to prove that money recited in a deed or receipt to have been paid was not in fact paid and section 93 of the Evidence Ordinance does not exclude such evidence the effect of which would be to invalidate the document.

The defendant was entitled to prove, if he could, that any provision of the Ordinance was not observed.

The appeal is allowed and the action is dismissed with costs and the appellant shall have the costs of the appeal.

Terrell, J.A.—In view of the fact that the acknowledgment on the copy of the promissory note was signed by the borrower and the copy itself by the lender, I am not prepared to say that there was not a sufficient note or memorandum as required by section 4 (1) and section 4 (4) of the Moneylenders Ordinance. This is in accordance with the trend of the authorities under the corresponding English Act.

The local Ordinance, however, contains also in section 4 (1) a requirement that the copy must be "authenticated by the lender or his agent". This provision does not appear in the English Act. In the case before the Court no authentication has been signed by the lender and accordingly the contract is not enforceable.

In addition I need only refer to the refusal of the learned trial Judge to hear evidence from the defendants that the copy was not handed over before the money was lent. It appears that the learned Judge, having decided that such evidence could not be led by the defendants, heard evidence by the plaintiff on this very issue, and gave a finding in accordance therewith. This is the subject matter of the 5th ground of appeal. Under the first *proviso* to section 91 of the Evidence Ordinance it is always permissible to adduce evidence to invalidate a contract. The defendants did not seek to vary the written contract and section 93, referred to in the record, appears to have no application. As, however, the appellant has succeeded on the authentication point, it is not necessary to order a retrial for the purpose of obtaining the defendants' evidence on the other issue.

I would accordingly allow the appeal with costs here and below, the deposit to be paid out to the appellants or their solicitors.

Poyser, C.J. (F.M.S.)—I have read the judgment of the President of the Court and I agree, with some regret, that the appeal must be allowed, and the grounds for coming to this conclusion are that I do not consider the provisions of section 4 of Cap. 218 in regard to the authentication of the copy of the contract by the lender were strictly complied with.

The authentication clause of 'B1' was not signed by the lender, nor was there anything on the document in the nature of an authentication by the lender. The lender only signed 'B1' at the foot of the copy of the promissory note. The trial Judge held that as "B1".

> "Contained an exact copy of the contract and bore on its face the signature of both plaintiff and defendant, it was a substantial and adequate compliance with the requirements of section 4, so far as authentication was concerned".

I do not agree; the provisions of the Moneylenders Ordinance must be strictly complied with. There are a number of authorities, both English and local, to this effect, and in this case such provisions were not strictly complied with.

Appeal allowed.